Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	
Technologies Transitions Policy Task Force	GN Docket No. 13-5

COMMENTS OF THE AMERICAN CABLE ASSOCIATION ON PUBLIC NOTICE DA 13-1016 ON POTENTIAL TRIALS

The American Cable Association[1] ("ACA") respectfully submits these comments filed in response to the Public Notice issued by the Technology Transitions Policy Task Force ("Task Force") seeking comment on potential trials.[2] The Task Force requests comments on three specific trials – VoIP Interconnection, Next Generation 9-1-1, and Wireline to Wireless – and offers the opportunity to comment on the AT&T IP Trial proposal[3] and propose additional trials. ACA comments only on the VoIP Interconnection trial and, to the extent it involves similar issues, on the AT&T IP Trial proposal.

The Task Force seeks comment on whether to conduct trials in a few geographic areas on technical, logistical, and process issues related to VoIP interconnection.[4] ACA maintains that

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1 ACA represents over 800 small and mid-sized cable television operators, most of whom also offer voice services and broadband Internet access services. In offering voice services, ACA members that are local exchange carriers ("LECs") may use TDM technology. ACA's members that are not LECs use managed VoIP service to ensure quality of service.

2 *See Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016, (rel. May 10, 2013) ("Public Notice").

3 *See* AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353 (filed Nov. 7, 2012).

4 *See* Public Notice at 5.

until the Commission finds that incumbent LECs ("ILECs") no longer possess market power, the interconnection obligations of Sections 251 and 252 of the Communications Act (the "Act")[5] should continue to apply to the exchange of managed VoIP traffic. ACA submits that to increase market certainty and facilitate the IP transition, the Commission should affirm those obligations. Further, trials, such as those proposed in the Public Notice or by AT&T, would shed no light on this question. Rather, as the Commission has done in other proceedings, it can make its determination about whether market power has abated by collecting data from market participants. In contrast, trials might prove useful in resolving technical or logistical issues to the extent they exist. However, based on the experiences of its members, ACA submits that there are no open VoIP interconnection issues that involve these matters.

ACA's conclusion is consistent with the finding of the Commission's Technological Advisory Council's Working Group on VoIP Interconnection: "VoIP interconnection is growing in the USA due to efforts by MSOs [cable operators] and CLECs. This reinforces the point that deployment is technically feasible today but is largely being delayed due to commercial and policy considerations."[6]

ACA members face regulatory related issues in exchanging VoIP traffic. This stems from the fact that incumbent providers possess and exercise market power when it comes to interconnection negotiations. To ensure high quality service (akin to traditional TDM voice service), the provision of managed VoIP requires real time, full duplex communications throughout the duration of each call. As a result, managed VoIP providers must minimize the

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5 *See* 47 U.S.C. §§ 251, 252. ACA notes that section 251(f) of the Act provides an exemption from section 251(c) for certain rural telephone companies under certain circumstances.

6 Federal Communications Commission Technological Advisory Council, *TAC Memo – VoIP Interconnection*, at 2 (Sept. 24, 2012) ("TAC Memo").

number of interconnection routing points. Each point of intermediate exchange during routing raises potential degradation of a call, forcing managed VoIP providers to either (i) directly connect with all other potential terminating carriers (which is unrealistic, as even the largest carriers today do not have direct connections to all other carriers and a waste of resources where little traffic is exchanged); or (ii) interconnect with large carriers that are connected to numerous other carriers (such as the ILECs), to route the call with one intermediate exchange. In most larger markets, only ILECs are connected to most carriers, and ILECs are usually the sole carriers that can offer a single intermediate exchange routing.

Thus, despite competition in select retail voice markets, larger ILECs continue to dominate the interconnection and transit markets. Charter Communications made this point in an *ex parte* letter filed late last year: "Just as in the traditional circuit-switched world, incumbent carriers have the ability to exercise market power in the managed VoIP market."[7] In its comments on the AT&T trial proposal, Cablevision supported this conclusion and provided several bases for continuing ILEC market power. First, because the larger ILECs operate in and control larger geographic areas than any competitive provider, they control more end points that competitors need to reach and have less need to interconnect with other providers to terminate traffic. Accordingly, this places the larger ILECs in a dominant position in interconnection negotiations vis-a-vis competitive providers.[8] Second, the two largest ILECs gain additional leverage in negotiations because they control significant volumes of wireless and international traffic through their unregulated affiliates.[9] Third, the larger ILECs' networks not only reach

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7 Charter Communications *Ex Parte* Letter, WC Docket No. 10-90 et al. at 2 (Dec. 17, 2012).

8 *See* Comments of Cablevision Systems Corp., GN Docket No. 12-353 at 4 (filed Jan. 28, 2013).

9 *See id.*

many more end points than any competitive provider, they include vastly more transport (transit) links and longer-haul facilities. This means that unaffiliated competitive local exchange carriers rely on the larger ILECs for indirect interconnection among their networks, providing one more element of leverage.[10]

In short, when dealing with these larger ILECs, cable operators providing managed VoIP service are at a disadvantage in negotiating reasonable, competitive rates and terms. ACA members already have experienced problems when seeking IP interconnection with ILECs. For instance, larger ILECs frequently condition interconnection on multiple dedicated connections to each tandem within each LATA regardless of the amount of traffic anticipated and restrict the ability of carriers to transit traffic across the ILEC network, both of which raise the cost of service for cable operators artificially.

As a result of these problems, ACA members need to rely upon the interconnection framework of section 251(c)(2) and 252(d)(1) of the Act[11] to ensure they are able to do so at cost-based rates and on reasonable and non-discriminatory terms. Confirming that interconnection rights exist when exchanging VoIP traffic is the critical issue the Commission should address. It is the issue that ACA and individual cable operators focused on in their comments on AT&T's proposed IP trials.[12] It is the issue that the Commission has before it in the *USF/ICC Transformation Order*,[13] a proceeding in which substantial comments have already been filed. ACA submits that because there is such a complete record, this issue is ripe for

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10 *See id.*

11 *See* 47 U.S.C. §§ 251(c)(2), 252(d)(1).

12 *See* Reply Comments of the American Cable Association, GN Docket No. 12-353 (Feb. 25, 2013). *See e.g.*, Reply Comments of Charter Communications, Inc., GN Docket No. 12-353 (Feb. 25, 2013).

13 *See Connect America Fund, et al.*, WC Docket No. 10-90 et al. FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

action. ACA notes that the Commission's Technological Advisory Council Working Group agrees with this conclusion, stating, "The FCC has established a significant record on this [VoIP interconnection] issue in response to the further notice. The FCC should answer the critical question of whether section 251 requirements apply to VoIP interconnection."[14] The Commission should act now to affirm that regardless of technology all interconnection for the exchange of traffic is governed by sections 251 and 252 of the Act.

Even if the Commission believes it needs to gather further information about VoIP interconnection problems, questions about the need for the interconnection provisions of the Act to apply to VoIP service do not lend themselves to trials. Rather, the Commission can answer these questions by first determining whether as a legal matter sections 251 and 252 apply regardless of the transmission technology. Then, assuming the Commission affirms the application of these provisions and if there is a forbearance proceeding, it would collect economic data about the state of the market and analyze it to determine whether the ILECs have market power. This is the well-accepted approach used by antitrust authorities to analyze competition in markets, and the Commission has used this type of market power analysis frequently "to determine whether competition has increased sufficiently to render certain regulatory protections no longer necessary" and has found it "to be well-designed to protect consumers, promote competition, and stimulate innovation."[15] Moreover, the Commission has found that this analysis should account for new market developments.[16] Neither in making the legal determination nor in analyzing market power would a trial be a substitute or otherwise

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14 TAC Memo at 2-3.

15 *Wireline Competition Bureau Seeks Comment on Applying the Qwest Forbearance Order Analytic Framework in Similar Proceedings*, WC Docket Nos. 06-172, 07-97, Public Notice, DA 10-1115 at 2 (June 22, 2010).

16 *See id.*

provide any information that would materially benefit the Commission's decision-making on the application of sections 251 and 252 to VoIP interconnection.

Not only are trials unnecessary for the purpose of determining whether interconnection regulations should be in effect, there are basic problems with conducting such trials to answer these questions. Most importantly, they will almost certainty produce artificial or distorted results. For instance, knowing that the outcome of the trials will bear directly on whether interconnection regulations will apply, ILECs will tend to be on their best-behavior to indicate that agreements can be reached in a completely deregulated environment, or worst behavior to demonstrate that the application of sections 251 and 252 will produce a regulatory morass.[17] Such gaming is inherent in this situation, particularly where the ILECs fundamentally oppose a mandate that would constrain their behavior.

In addition to examining the legal and regulatory issues involved with VoIP interconnection, the Task Force inquires about whether the trials should involve technical issues. ACA submits that from the perspective of cable operators, these technical issues are largely settled and trials are not warranted. For many years, the cable industry has had a leading role in developing and using IP to deliver voice services. Through CableLabs, cable operators, more than 15 years ago, began to develop an architecture for the delivery of voice and other services. This led to the adoption in 2006 of standards for the delivery of IP telephony as part of the development of the PacketCable network. PacketCable 1.0 and 1.5 set forth a complete network architecture for the delivery of digital IP voice service over a DOCSIS cable network. Since then, CableLabs has regularly updated these specifications. The current version, PacketCable

[17] For support of this point, *see* the Remarks at the TIA Network Transition Event of Sean Lev, Acting Director, Technology Transitions Policy Task Force (June 21, 2013) ("However we move forward, if we're trying to test the consequences of different regulatory frameworks, we need to ensure that the results don't simply reflect carriers on their 'best behavior.'").

2.0, enables enhanced delivery of digital voice services and supports the integration of various features across service platforms. It is based on common standards technologies, including Session Initiation Protocol and the IP Multimedia System. In all instances, to ensure quality of service, PacketCable delivers traffic over managed IP backbones and not the public Internet.

The PacketCable standards have been enormously valuable for cable operators in expediting their deployment of high-quality and efficient managed VoIP service. They have fostered an environment whereby many equipment vendors have developed and update IP telephony products that are easily integrated into DOCSIS networks. As a result, the provision of VoIP by cable operators, even smaller operators, has grown tremendously. Today cable operators provide VoIP service to approximately 30 million subscribers.[18]

It is because these VoIP technical specifications have been used for so long that ACA believes any concerns about the transition to IP networks do not revolve around technical issues. Cable operators know the technical requirements for providing managed VoIP service and the exchange traffic between networks.

In sum, ACA urges the Commission to complete action based on the substantial record in the pending proceeding to address the legal question and affirm that regardless of technology all interconnection for the exchange of traffic is governed by sections 251 and 252 of the Act. Then it can turn to examining the market for VoIP interconnection to determine whether the ILECs continue to have market power and forbear if it finds that such market power does not exist. ACA submits this "regular order" approach for examining the legal and regulatory questions

[18] *See Local Telephone Competition: Status as of June 30, 2012*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, June 2013, Table 6.

surrounding VoIP interconnection will prove to be much more productive than the proposed trials.

Respectfully submitted,

Matthew M. Polka President and Chief Executive Officer American Cable Association One Parkway Center Suite 212 Pittsburgh, Pennsylvania 15220 (412) 922-8300 Ross J. Lieberman Vice President of Government Affairs American Cable Association 2415 39th Place, NW Washington, DC 20007 (202) 494-5661 July 8, 2013	Thomas Cohen Joshua Guyan Kelley Drye & Warren LLP 3050 K Street, NW Suite 400 Washington, DC 20007 Tel. (202) 342-8518 Fax (202) 342-8451 tcohen@kelleydrye.com Counsel to the American Cable Association